

OPINION
63-158

April 2, 1963 (OPINION)

LEGISLATION

RE: Referred Measures - Form

This is in response to your request for an opinion as to the correct form of a referral petition. You specifically ask if the measure referred must be set forth in its entirety in the petition or can it be referred to by title and subject matter.

The question involves the interpretation and construction of Section 25 of Article 2 of the North Dakota Constitution. As is material here, this section provides as follows:

The legislative power of this state shall be vested in a legislature consisting of a senate and a house of representatives. The people, however, reserve the power, first, to propose measures and to enact or reject the same at the polls; second, to approve or reject at the polls any measure or any item, section, part or parts of any measure enacted by the legislature.

The first power reserved is the initiative. Ten thousand electors at large may propose any measure by initiative petition. Every such petition shall contain the full text of the measure and shall be filed with the Secretary of State not less than ninety days before the election at which it is to be voted upon.

The second power reserved is the referendum. Seven thousand electors at large may, by referendum petition, suspend the operation of any measure enacted by the legislature, except an emergency measure. But the filing of a referendum petition against one or more items, section or parts of any measure, shall not prevent the remainder from going into effect. Such petition shall be filed with the Secretary of State not later than ninety days after the adjournment of the session of the legislature at which such measure was enacted.

Each measure initiated by or referred to the electors, shall be submitted by its ballot title, which shall be placed upon the ballot by the Secretary of State and shall be voted upon at any state-wide election designated in the petition, or at a special election called by the Governor. The result of the vote upon any measure shall be canvassed and declared by the board of canvassers."***

The Secretary of State shall pass upon each petition, and if he finds it insufficient, he shall notify the 'Committee for the Petitioners' and allow twenty days for correction or amendment."***

Each petition shall have printed thereon a ballot title, which shall fairly represent the subject matter of the measure, and the names of at least five electors who shall constitute the 'committee for the petitioners' and who shall represent and act for the petitioners."***

The enacting clause of all measures initiated by the electors shall be: 'BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA.' In submitting measures to the electors, the Secretary of State and all other officials shall be guided by the election laws until additional legislation shall be provided."***

This section shall be self executing and all of its provisions treated as mandatory. Laws may be enacted to facilitate its operation, but no laws shall be enacted to hamper, restrict or impair the exercise of the rights herein reserved to the people."

Section 16-01-13 of the North Dakota Century Code pertaining to initiated and referred measures provides as follows:

Initiated and referred measures to be numbered - Placing upon ballot. - Each measure initiated by or referred to the electors shall be numbered in the order received and shall be submitted to the electors by number and ballot title and shall be placed upon the ballot by the secretary of state."

Section 16-11-07 of the North Dakota Century Code provides as is material here as follows:

A constitutional amendment, initiated or referred measure or other question shall be stated fully and fairly on such ballot. Immediately preceding the constitutional amendment or initiated or referred measure on the ballot, the secretary of state shall cause to be printed a short concise statement in bold face type, which statement shall fairly represent the substance of the constitutional amendment or the initiated or referred measure. The attorney general shall approve all such statements written by the secretary of state. The words 'Yes' and 'No' shall be printed on the ballot at the close of the statement of the question, in separate lines with a square formed of black lines after each statement in which the voter may indicate by a cross or other mark how he desires to vote on the question."***

In precincts in which voting machines are used, the entire amendment or measure need not be set forth on such machine but the ballot title, in the case of amendments or measures submitted by the people, or the title of the legislative bill or resolution, in the case of proposed amendments submitted by the legislative assembly, shall be set forth in full."

This section pertains primarily to the manner in which an initiated or referred measure is to be placed on the ballot. The question before us is whether or not the measure being referred must be set

forth in its entirety in the petition, or whether it can be referred to by title and general subject matter.

We note that the constitutional provision quoted above as pertaining to the initiative requires that the full text of the measure shall be set forth in the petition. (Note the underscored language in the second paragraph of Section 25 of the Constitution.) Such language or similar language is not found in the specific paragraph relating to the referendum. It appears significant that the provision to fully set forth the text of the measure is found in the section pertaining to the initiative but is not found in the section pertaining to the referendum.

The North Dakota Supreme Court had under consideration the language of Section 79 of the North Dakota Constitution as to whether Sundays were excepted from the fifteen days allowed to the Governor to act upon a bill after the legislature adjourned. The Court specifically noted that Sundays were excepted in the three days while the legislative assembly is in session, and that the exception was not found in the fifteen day provision. The Court, in this case, (Watkins vs. Norton, 21 N.D.473, (131 N.W.257) said:

The fact that the framers of our constitution deemed it wise to exclude intervening Sundays in fixing the three days' period in no manner tends to show that, in fixing the fifteen days' period, they deemed it wise or necessary to also exclude intervening Sundays. They were dealing with two distinct periods of time having no similarity; and if they intended to exclude intervening Sundays as to the larger period of time fixed by them, it is reasonable to assume that they would have expressly so provided."

We believe that the reasoning of the Court applied in the cited case is applicable to the question at hand. The initiative and referred provisions are in this respect two separate items. In the initiative, the full text must be contained in the petition, whereas in the referendum no mention is made.

The initiative, as the word implies, is the proposal to enact a new measure. In this respect, the Constitution specifically provides that all initiated measures shall contain the enacting clause, "BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA." This provision does not apply to the referendum. (See Schumacher vs. Byrne, 61 N.D.220 (237 N.W.741).

The referendum pertains to a measure which has been enacted by the legislature. It is in this respect not considered as new material. The measure enacted by the legislature is a public document, regardless whether such measure is approved or rejected at the ensuing election; whereas, initiated measure or a measure to be initiated does not become a public document until same is properly submitted by petition with sufficient signatures to the secretary of state.

In discussing the initiative and referendum, the North Dakota Supreme Court in Dawson vs. Tobin, 874 N.D.713 (24 N.W.2d 737 and pg. 736) said:

True, the initiative extends to all types of legislation. It is as broad as the lawmaking power of the legislature, and the repeal of a statute, expressly or by necessary implication, may doubtless be accomplished by an initiative measure.*** But those who desire to have the people pass final judgment upon whether a measure enacted by the legislature shall be approved or or rejected are not required to invoke the initiative power. The power of the referendum is reserved to enable the people to pass final judgment on whether laws enacted by the legislative assembly shall be approved or rejected. The principal purpose to be served by the referendum is to enable the people to reject laws which they find to be unsatisfactory or undesirable. The referendum is more expeditious and efficient for this purpose than is the initiative."***

The initiative and referendum are both phases of legislative processes, but they are wholly separate and independent powers. The constitution declares them as separate powers."***

While not necessarily controlling, the practices permitted and followed in the past are to be given some weight. A review of the referendum petitions filed in the Office of the Secretary of State disclosed that some of the petitions filed with said office only referred to the number of the house or senate bill, the ballot title to be used, the title of the bill being referred, the time when the petition is to be submitted to the electorate, and the names and addresses of the members comprising the committee, whereas other petitions contained all of the foregoing and in addition thereto, recited the full text of the measure being referred.

The North Dakota Supreme Court in Schumacher vs. Byrne, 61 N.D.221 (237 N.W.741) had under consideration the sufficiency of a referendum petition referring a senate bill to the people. The petition was attacked as being insufficient for a number of reasons but did not include specifically the question whether or not the petition must contain the full text of the measure being referred. In this instance, the petition did not recite the full text of the measure being referred. It would seem to us that if such would have constituted a defective petition, it would have been so urged, and we further believe that if the failure to set out the full text of the measure in the petition would have been defective, the court would have so ruled.

The petition in the above case was entitled "Referendum Petition." The petition contained a statement that it was a referendum petition for the referendum of Senate Bill No. 100. It also contained an enacted clause which the Supreme Court said was unnecessary. In the body of the petition it referred again to Senate Bill No. 100 and then stated the title of Senate Bill No. 100. It also set forth the election on which the matter was to be voted on by the electorate. It also set out the ballot title to be used and the names and addresses of the committee for the petitioners.

The Supreme Court, in passing on the question, noted that the constitutional provision referring to the referendum requires that the petition have printed thereon a ballot title which shall fairly

represent the subject matter of the measure. It also observed that, while the constitution prescribes that such referred measure is to be submitted by a ballot title, the "ballot title" shall be placed upon the ballot by the Secretary of State. The Court observed that there is a distinction between the ballot title and the statement of the question to be voted upon. The Court went on to observe that the ballot title is not a statement of the question, but is merely the title. As to the specific ballot title in the instant case, the Court observed that it could be improved upon but, nevertheless, it was an accurate statement and would fairly represent the subject matter of the measure.

In studying this case, we come to the conclusion that the full text of the measure being referred need not be set out in the referral petition. The Court made the observation that North Dakota does not have a statute providing a form for a referendum petition and noted that the Constitution clearly implies that the legislature may provide such legislation as it may deem necessary. The North Dakota legislature has not as yet set forth a form for the referendum petition. The obvious inference that may be drawn from the Schumacher vs. Byrne case is therefore still valid.

In view of the foregoing, it is our opinion that the full text of the measure being referred need not be recited in the petition. While it may be advisable to recite the full text, we cannot as a matter of law conclude that it is mandatory to do so in order to make a petition valid or to cause the measure to be referred to the electorate for approval or rejection. The petition must, however, adequately inform the signers or the electorate of such matter and must fairly represent the subject matter being referred.

HELGI JOHANNESON

Attorney General